

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 13295-17

AGENCY DKT.NO.WXXXX XXXXX 04626

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

MICHAEL WEISSMAN,

Respondent.

Courtney Davison, Driver Improvement Analyst 3, for petitioner pursuant to N.J.A.C.
1:1-5.4(a)2

Leib Klein, Esq., for respondent

Record Closed: January 17, 2018

Decided: March 5, 2018¹

BEFORE **KATLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Michael Weissman (Weissman or respondent), appeals an order of suspension issued by the Motor Vehicle Commission (Commission) for operating a vehicle while

¹ The initial decision was prepared and ready to be filed on Friday, March 2, 2018, but due to a snow storm and power outage affecting the Quakerbridge office, the decision was not filed until Monday, March 5, 2018.

suspended. The Commission proposed to suspend respondent's driving privilege for 180 days pursuant to N.J.S.A. 39:3-40, N.J.S.A. 39:5-30, and N.J.A.C. 13:19-10.8.

PROCEDURAL HISTORY

The Commission issued a notice of scheduled suspension, dated July 27, 2016. Respondent submitted a timely request for a hearing. The Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on September 1, 2017, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to-13. The hearing was conducted November 21, 2018. The record remained open to allow respondent's attorney to file a post-hearing submission. I closed the record on January 17, 2018 after receipt of respondent's closing brief.

FACTUAL DISCUSSION AND FINDINGS

Having considered the documentary evidence and testimony, which is not disputed, and considering the credibility of the witnesses, I **FIND** the following **FACTS**:

Courtney Davison (Davison) testified on behalf of the Commission. She indicated that the respondent drove while he was suspended. The Commission prepared a scheduled notice of suspension on January 15, 2016 (P-2) which indicated that respondent's driving privileges were to be suspended on March 14, 2016 for failure to answer a Summons issued in New York. Respondent was stopped and ticketed for delaying traffic in New Jersey on June 5, 2016. (P-1.) The suspension order was prepared on June 8, 2016. (P-3.) Respondent's driving privileges were restored on June 22, 2016. (P-4) On August 3, 2016, the Commission sent another scheduled suspension notice (P-5) suspending respondent's driving privilege as of August 20, 2016 for 180 days for operating a motor vehicle during a period of driving privilege suspension, as shown by the delay of traffic violation on June 5, 2016. The order of suspension prepared on June 8, 2016 had an effective suspension date of May 24, 2016. (P-1 and P-3.) Davison stated that the January 15, 2016 notice of a scheduled suspension was adequate notice even though the order of suspension was not prepared until June 8, 2016.

Respondent testified that he had no knowledge that his driving privileges had been suspended when he was stopped in Lakewood on June 5, 2016 for a traffic violation. The police officer who issued the ticket did not inform him that his license was suspended and he was issued no other tickets. He testified that he had no knowledge that his license was suspended until he received a copy of the June 8, 2016 order of suspension in the mail, following his traffic stop. Upon receiving the order in the mail, he stopped driving. He immediately paid the restoration fee on June 21, 2016 and his driving privileges were restored. (P-4.) He stated that he never would have driven if he knew that his license had been suspended. He was aware of the ticket in Buffalo, New York. It was issued on October 15, 2015. Due to the difficulty in going back to Buffalo to defend this ticket, he requested extensions of his court dates and had to hire an attorney to represent him. Numerous extensions were given. He had no way of knowing that his license had been suspended when he operated his motor vehicle on June 5, 2016. He questioned how he could be penalized for driving after May 24, 2016, when the order suspending his driving privileges was not prepared until June 8, 2016, three days after his traffic violation.

On November 28, 2016, respondent attended a pre-suspension conference with the Commission concerning the proposed 180-day suspension. (P-6.)

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 13:19-10:8 provides for a 180-day suspension of driving privileges when it is shown that a driver has operated a vehicle during a period of suspension. The record clearly reflects that the Commission is seeking to suspend respondent's privileges for driving on June 5, 2016, and that the order suspending his privileges was not issued until June 8, 2016, even though notice had been sent in January that the license would be suspended as of March 14, 2016. The record further reflects that once respondent became aware of the order of suspension, he addressed the issue immediately, and restored his license on June 21, 2016.

N.J.S.A. 39:3-40 states in pertinent part that "No person . . . whose driver's license has been suspended . . . shall personally operate a motor vehicle during the period of . . . suspension . . ." Based on the foregoing, I **CONCLUDE** that respondent did not operate a

motor vehicle during a period of suspension, as the order suspending his privilege was not issued until three days after the incident for which the Commission seeks to suspend, actually occurred.

ORDER

Based upon the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey driver's license for 180-days is hereby **REVERSED**. Respondent's appeal is hereby **GRANTED**.

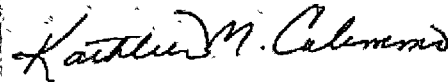
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 5, 2018

DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

March 5, 2018

Date Mailed to Parties:

March 5, 2018

/caa

APPENDIX

WITNESSES

For petitioner:

Courtney Davison, Driver Improvement Analyst 3

For respondent:

Michael Weissman

EXHIBITS

For petitioner:

- P-1 Certified abstract
- P-2 Copy of scheduled suspension notice, dated January 15, 2016
- P-3 June 8, 2016 Suspension Order
- P-4 June 22, 2016 Restoration Notice
- P-5 July 27, 2016 Scheduled Suspension Notice
- P-6 Conference Report

For respondent:

None